

Masco Fire Protection, Inc. and Road Sprinkler Fitters Local Union No. 669, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada

Masco Fire Protection, Inc. and its alter ego Ignis Systems, Inc. and Road Sprinkler Fitters Local Union No. 669, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada.
Cases 25-CA-15284 and 25-CA-15356

30 September 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

Upon charges filed on 14 February 1983 in Case 25-CA-15284 by Road Sprinkler Fitters Local Union No. 669, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, herein called the Union, and duly served on Masco Fire Protection, Inc., herein Respondent Masco, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 25, issued a complaint on 18 March 1983, and upon charges filed on 11 March 1983 by the above-named Union and duly served on Respondent Masco and its *alter ego* Ignis Systems, Inc., herein called Respondent Ignis, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 25, issued an order consolidating cases, complaint in Case 15-CA-15356, and notice of hearing on 21 April 1983, alleging that Respondent Masco and Respondent Ignis, herein jointly called Respondent, had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charges, complaints, and notice of consolidated hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

On 20 May 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment with exhibits attached. Subsequently, on 20 May 1983 the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and the averments of the Motion for Summary Judgment and the attached

supporting exhibits and certifications stand uncontested.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaints and the notice of consolidated hearing served on Respondent specifically state that unless an answer to the complaints is filed by Respondent within 10 days of service thereof "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, counsel for the General Counsel advised counsel for Respondent, by letter of 10 May 1983, of its intention to file for Summary Judgment absent actual receipt of an answer to the complaint no later than 5 p.m., 16 May 1983. No answer was received from Respondent by 16 May 1983, nor by 20 May 1983, the date of the Motion for Summary Judgment. No good cause for failure to file an answer having been shown, in accordance with the rule set forth above, the allegations of the complaints are deemed to be admitted to be true. We, accordingly, find as true all allegations of the complaints and grant the Motion for Summary Judgment.¹ On the basis of the entire record, the Board makes the following:

¹ In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's complaint. Thus, the Chairman regards this proceeding as essentially a default judgment which is without precedential value.

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondents Masco and Ignis, both Indiana corporations with their principal office and place of business in Indianapolis, Indiana, are, and have been at all times material herein, *alter egos* and a single employer within the meaning of the Act and are engaged in the business of installation of sprinkler systems in new and existing structures and related services and construction. Annually, in the course and conduct of its business, Respondent purchases and receives goods and materials valued in excess of \$50,000 directly from points outside the State of Indiana.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Road Sprinkler Fitters Local Union No. 669, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

1. On or about an unknown date in June 1982 Respondent Ignis was established by Respondent Masco as a subordinate instrument to and a disguised continuation of Respondent Masco for the purpose, and with the intent, of avoiding and evading its obligations under the collective-bargaining agreement, covering the period from 1 April 1982 to 31 March 1985, for the purpose of avoiding payment of the rates of pay and fringe benefits as provided by that collective-bargaining agreement, and for the purpose and with the intent of discouraging employees from joining the aforementioned labor organization or engaging in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

2. The following employees of both Masco Fire Protection, Inc., and Ignis Systems, Inc., constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All journeymen sprinkler fitters and apprentices, but excluding all supervisors as defined by the Act.

3. Respondent, from on or about an unknown date in June 1982, and continuing to the present, failed to continue in full force and effect all the terms and conditions of the collective-bargaining agreement of 1 April 1982, including, *inter alia*, the rates of pay and fringe benefits provided by said agreement, and failed to negotiate and bargain with the Union with respect to such acts and conduct and the effects of such acts and conduct.

4. Respondent, since on or about 3 December 1982, has failed to furnish the Union with information necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the unit.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act, we shall order that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Accordingly, having found the appropriate bargaining unit includes the employees of both Respondent Masco and Respondent Ignis² and that since some unknown date in June 1982 Respondent has refused to bargain collectively with the Union by refusing to apply the collective-bargaining agreement with the Union to Respondent Ignis' employees in the unit, Respondent shall be ordered to recognize the Union as exclusive bargaining representative of Respondent Ignis' employees in the unit and to apply the collective-bargaining agreement to its employees retroactive to the unknown date in June 1982 when Respondent Ignis began operations, and jointly and severally make the unit employees whole for any loss of earnings or other compensation they may have suffered by the unlawful refusal to apply the collective-bargaining agreement to them. Respondent shall also provide the Union with all lawfully requested information necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the

² See, e.g., *Edward J. White, Inc.*, 237 NLRB 1020 (1978).

unit. Respondent shall give retroactive effect to the terms and conditions of employment of said contract and jointly and severally make unit employees, including but not limited to Mark Todd, Dennis Moore, Greg Sanders, and Maurice Hoover, whole, with interest, for any loss of pay or other employment benefits which they may have suffered by reason of Respondent's failure to properly apply the aforesaid agreement, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977).³ The Board will not order a restoration of lost work, since the employees of Respondent Masco and Respondent Ignis together are in fact members of the same bargaining unit. Thus, applying the collective-bargaining agreement uniformly to employees throughout the unit, combined with the make-whole provision, above, properly compensates all concerned.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Masco Fire Protection, Inc., and Ignis Systems, Inc., are each employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Ignis Systems, Inc., is the *alter ego* of Masco Fire Protection, Inc.

3. Road Sprinkler Fitters Local Union No. 669, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, is a labor organization within the meaning of Section 2(5) of the Act.

4. The following employees of both Masco Fire Protection, Inc., and Ignis Systems, Inc., constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All journeymen sprinkler fitters and apprentices, but excluding all supervisors as defined by the Act.

5. The above-named labor organization is now, and at all times material herein has been, the exclusive bargaining representative of all the employees of Respondent Masco and Respondent Ignis in the aforesaid unit for the purposes of collective bargaining. Such recognition has been embodied in successive collective-bargaining agreements, the most recent one effective by its terms for the period 1 April 1982 to 31 March 1985.

6. By refusing since on or about an unknown date in June 1982 to bargain collectively with the

Union as exclusive bargaining representative of the employees in the aforesaid unit; by unilaterally transferring bargaining unit work from Respondent Masco and Respondent Ignis; by unilaterally altering the terms and conditions of the collective-bargaining agreement of 1 April 1982; by refusing to supply requested information necessary for, and relevant to, the Union in its function as the exclusive collective-bargaining representative; and by failing to apply the collective-bargaining agreement with the Union to the unit employees of Respondent Ignis, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

7. By discriminating against Mark Todd, Dennis Moore, Greg Sanders, and Maurice Hoover, by failing and refusing to pay them the fringe benefits and rates of pay due them under the collective-bargaining agreement, because they joined, supported, and assisted the Union, Respondent has violated Section 8(a)(3) and (1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Masco Fire Protection, Inc. and its *alter ego* Ignis Systems, Inc., Indianapolis, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Road Sprinkler Fitters Local Union No. 669, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, as the exclusive representative of its employees in the appropriate unit described below, by unilaterally transferring bargaining unit work from Respondent Masco's employees to the employees of Respondent Ignis and by refusing to apply the collective-bargaining agreement with the Union to the unit employees of Respondent Ignis. The appropriate unit is:

All journeymen sprinkler fitters and apprentices, but excluding all supervisors as defined by the Act.

(b) Discouraging membership in the above-named labor organization by discriminating against employees because of their union membership or activities.

(c) Discouraging membership in the above-named labor organization by failing or refusing to apply the terms and conditions of its collective-bar-

³ See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

gaining agreement with said labor organization to employees encompassed by the appropriate unit of its collective-bargaining agreement.

(d) Failing or refusing to supply the above-named labor organization lawfully requested information concerning rates of pay, wages, hours of employment, and other terms and conditions of employment and all other information necessary for, and relevant to, the labor organization's performance of its function as the exclusive collective-bargaining representative of the unit.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Recognize Road Sprinkler Fitters Local Union No. 669, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, as the exclusive representative of the employees of Respondent Ignis and Respondent Masco in the aforesaid appropriate unit with regard to rates of pay, wages, and hours of employment and apply the collective-bargaining agreement with the Union to all unit employees, retroactive to June 1982.

(b) Jointly and severally make all employees in the aforesaid unit whole for any loss of earnings or other compensation they may have suffered since on or about an unknown date in June 1982 by virtue of Respondent's refusal to apply the collective-bargaining agreement to them.

(c) Jointly and severally make the unit employees of Respondent Masco whole for any loss of earnings or other compensation they may have suffered since some unknown date in June 1982 by reason of Respondent's unlawful assignment of work.

(d) Comply with lawful requests of the above-named labor organization for information necessary for, and relevant to, the labor organization's performance of its function as the exclusive collective-bargaining representative of the unit.

(e) Post at its Carmel, Indiana, and Indianapolis, Indiana, offices copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to

employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Road Sprinkler Fitters Local Union No. 669, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, as the exclusive representative of our employees in the appropriate unit described below by unilaterally transferring bargaining unit work, from the employees of Masco Fire Protection, Inc., to the employees of Ignis Systems, Inc., and by refusing to apply the collective-bargaining agreement with the Union to the unit employees of Ignis Systems, Inc.

WE WILL NOT discourage membership in the above-named labor organization by discriminating against employees because of their union membership or activities or by failing or refusing to apply the terms and conditions of the collective-bargaining agreement with the Union to the unit employees of Ignis Systems, Inc.

WE WILL NOT refuse to supply the above-named labor organization with lawfully requested information necessary for, and relevant to, the labor organization's performance of its function as the exclusive collective-bargaining representative of the unit.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization; to form, join, or assist any labor organization; to bargain collectively through representatives of their own choosing; to engage in concerted activities for the purpose of collective bargaining or mutual aid or protection; or to refrain from any or all such activities, except to the extent such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the National Labor Relations Act, as amended.

⁴ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL recognize the above-named labor organization as the exclusive representative of the employees of Ignis Systems, Inc. and Masco Fire Protection, Inc., described below in the appropriate unit, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and WE WILL apply the collective-bargaining agreement with the Union to those employees of Ignis Systems, Inc. The employees in the appropriate unit are:

All journeymen sprinkler fitters and apprentices, but excluding all supervisors as defined by the Act.

WE WILL jointly and severally make whole the employees of Ignis Systems, Inc., in the unit described above, for any loss of earnings or other compensation they may have suffered

since some unknown date in June 1982 by virtue of our refusal to apply the collective-bargaining agreement to them.

WE WILL jointly and severally make the unit employees of Masco Fire Protection, Inc., whole for any loss of earnings or other compensation they may have suffered since some unknown date in June 1982 by reason of the unlawful assignment of work to employees of Ignis Systems, Inc., rather than to them.

WE WILL comply with lawful requests of the above-named labor organization for information necessary for, and relevant to, the labor organization's performance of its function as the exclusive collective-bargaining representative of the unit.

MASCO FIRE PROTECTION, INC. AND
ITS ALTER EGO IGNIS SYSTEMS, INC.